

04-1527 S. D. WARREN CO. V. MAINE BD OF ENVIRONMENTAL PROTECTION

DECISION BELOW:868 A2d 210

LOWER COURT CASE NUMBER: Cum-04-314

QUESTIONS PRESENTED:

1. Does the mere flow of water through an existing dam constitute a "discharge" under Section 401, 33 U.S.C. § 1341, of the Clean Water Act, despite this Court's holding last year in *Miccosukee* that a discharge requires the addition of water from a distinct body of water?
2. Does the State of Maine's expansive application of Section 401 conflict with the Federal Energy Regulatory Commission's comprehensive licensing authority over hydroelectric generating projects under the Federal Power Act, 16 U.S.C. §§ 791a et seq.?

CERT. GRANTED 10/11/2005

LIMITED TO QUESTION 1 PRESENTED BY THE PETITION.